

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:INTL:B02

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June 22, 2020

TY:

### Legend

Taxpayer =

Foreign Company =

Foreign Country =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Attorney A =

Attorney B =

State =

Accountants =

Dear :

This is in response to a letter dated April 10, 2019, and additional correspondence dated March 9, 2020 and March 12, 2020, submitted on behalf of Taxpayer by an authorized representative requesting the consent of the Commissioner of the Internal Revenue Service ("Commissioner") to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code (the "Code") and Treas. Reg. § 1.1295-3(f) with respect to Taxpayer's investment in Foreign Company.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by penalties of perjury statements executed by an appropriate party. While this office has not verified any of the material

submitted in support of the request for rulings, it is subject to verification on examination.

## FACTS

Taxpayer, a U.S. citizen, indirectly owned through an investment fund an interest in Foreign Company of less than 10 percent from Year 1 through Year 5. Foreign Company is organized in Foreign Country. Foreign Company had losses in Year 1 through Year 5. In Year 5, the investment fund sold its shares of stock in Foreign Company to an unrelated buyer at a gain, some of which was held in escrow until Year 6.

Taxpayer's federal income tax returns for Year 1 and Year 2 were prepared by Attorney A. Attorney A is licensed to practice law by State, has more than twenty years of experience, and specializes in reporting for U.S. expatriates and other U.S. persons with assets, business activities, and investments abroad. Attorney A had also prepared Taxpayer's federal income tax returns for several years prior to Year 1 and knew about Taxpayer's investment in Foreign Company. Attorney A did not identify Foreign Company as a PFIC.

Taxpayer engaged Accountants to prepare Taxpayer's federal income tax returns for Year 3. When Accountants prepared Taxpayer's federal income tax returns, Accountants determined that Foreign Company was a PFIC; however, they failed to properly advise Taxpayer of the consequences of making, or failing to make, a QEF election, including the possibility of a retroactive QEF election. Taxpayer learned about the possibility of making a retroactive QEF election for Foreign Company when he received advice from Attorney B in Year 5.

Taxpayer submitted affidavits, under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date. Taxpayer has agreed to file amended returns for each of the subsequent taxable years affected by the retroactive election, if any. Taxpayer represents that, as of the date of the request for ruling, the PFIC status of Foreign Company had not been raised by the IRS on audit for any of the taxable years at issue.

## RULING REQUESTED

Taxpayer requests the consent of the Commissioner to make a QEF election under Treas. Reg. § 1.1295-3(f) for Foreign Company for Year 1.

## LAW

Section 1295(a) provides that a PFIC will be treated as a QEF with respect to a shareholder if (1) an election by the shareholder under section 1295(b) applies to the PFIC for the taxable year; and (2) the PFIC complies with the requirements prescribed

by the Secretary for purposes of determining the ordinary earnings and net capital gains of the company.

Under section 1295(b)(2), a QEF election may be made for a taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for the taxable year. To the extent provided in regulations, the election may be made after the due date if the shareholder failed to make the election by the due date because the shareholder reasonably believed the company was not a PFIC.

Under Treas. Reg. § 1.1295-3(f), a shareholder may request the consent of the Commissioner to make a retroactive QEF election for a taxable year if:

1. the shareholder reasonably relied on a qualified tax professional, within the meaning of Treas. Reg. § 1.1295-3(f)(2);
2. granting consent will not prejudice the interests of the United States government, as provided in Treas. Reg. § 1.1295-3(f)(3);
3. the request is made before a representative of the Internal Revenue Service raises upon audit the PFIC status of the company for any taxable year of the shareholder; and
4. the shareholder satisfies the procedural requirements of Treas. Reg. § 1.1295-3(f)(4).

The procedural requirements include filing a request for consent to make a retroactive election with, and submitting a user fee to, the Office of the Associate Chief Counsel (International). Treas. Reg. § 1.1295-3(f)(4)(i). Additionally, affidavits signed under penalties of perjury must be submitted that describe:

1. the events that led to the failure to make a QEF election by the election due date;
2. the discovery of the failure;
3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on the professional.

Treas. Reg. § 1.1295-3(f)(4)(ii) and (iii).

## CONCLUSION

Based on the information submitted and representations made with Taxpayer's ruling request, we conclude that Taxpayer has satisfied Treas. Reg. § 1.1295-3(f).

Accordingly, consent is granted to Taxpayer to make a QEF election for Foreign Company retroactive to Year 1; provided that Taxpayer complies with the rules under Treas. Reg. § 1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Kristine A. Crabtree  
Senior Technical Reviewer, Branch 2  
Office of Associate Chief Counsel (International)

cc: